IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5927 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDUMAL DEVRAM PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR MJ TRIVEDI for Petitioner - ABSENT

MS DARSHANA PANDIT for M/S PATEL ADVOCATES for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 15/09/2000

ORAL JUDGEMENT

The petitioner challenges his order of premature retirement on attaining the age of 55 years. The impugned order of his premature retirement which is at

Annexure "B" to the petition was made in public interest, retiring him from service with effect from 12.11.1987 when he completed the age of 55 years, with a simultaneous order to pay him three months salary in lieu of notice as contemplated by Rule 161 of the Bombay Civil Services Rules.

2. It is contended by the petitioner that the impugned order prematurely retiring him from service while he was holding charge as an auditor under the Registrar of Co-operative Societies amounted to retrenchment. It is alleged in para 4 of the petition that the impugned order is malafide, unreasonable and arbitrary and violative of Article 14 of the Constitution of India. It is also contended that the requirements of the Rules were not fulfilled in making the order and no reason was given as to why the petitioner was prematurely retired.

3. Under Rule 161(1)(aa)(i) of the said Rules, it is provided that an appointing authority shall, if he is of the opinion that it is in the public interest so to do, have an absolute right to retire any Government servant to whom Clause (a) of Rule 161(1) applied, by giving him a notice of not less than 3 months in writing or three months pay and allowances in lieu of such notice•, after the date on which he attains the age of 55 years, if he is in any service or post other than Class-I or Class-II service or post, the age limit for the purpose of direct recruitment to which is below 40 years.

It is thus clear that the appointing authority was empowered to retire the petitioner on his attaining the age of 55 years. It has been recorded in the impugned order of his premature retirement that his retirement was in public interest. In the affidavit-in-reply filed on behalf of the respondent No.2 it is brought on record, in para 4 thereof, that the petitioner who was serving as a non-gazetted auditor in the Co-operative Department office of Auditor (Certified) at Ahmedabad was attaining the age of 55 years on 12.11.1987 and therefore, his case was placed before the Review Committee alongwith 13 non-gazetted employees of the Department. The Committee took into consideration the adverse remarks in the confidential record of the petitioner for the period during 1.4.1980 and 13.2.1986. The nine adverse remarks which were taken into account by the Review Committee had been duly communicated to the petitioner. The fact that the enquiry was also pending against the petitioner was also taken into account and the Review Committee decided to recommend the case of the

petitioner for premature retirement on his attaining the age of 55 years and accordingly the relevant papers were placed before the State Government for its approval, which was granted by order dated 17th Sept. 1987, pursuant to which the petitioner came to be prematurely retired at the age of 55 years on 12.1.1987. Even in the impugned order of his premature retirement there is a clear mention of the enquiry being continued even after his retirement under the provisions of Rule 189A of the said Rules. There is absolutely no reason to doubt these facts which have been placed on record by a responsible officer of the concerned authority, merely because in the affidavit-in-rejoinder the statement that the relevant record was placed before the Review Committee has been disputed by the petitioner. The petitioner had no personal knowledge of the manner in which his case was reviewed and therefore, he would not be competent to throw any light on the question as to whether the papers were placed before the Review Committee or not and it is the concerned authority alone who could give the particulars as is done by filing the affidavit-in-reply on behalf of the respondent No.2. It is thus, clear that the order of premature retirement has been made against the petitioner after due consideration of his case by the Review Committee on the basis of the material on record and it cannot therefore be said that the impugned order is arbitrarily made or that it violates the provisions of Article 14 of the Constitution. The order of premature retirement was not intended to be by way of any punishment and therefore, there was no question of giving any hearing to the petitioner before making of the said order. There is therefore no substance in the challenge made by the petitioner against the impugned order of his premature retirement. The petition is therefore rejected. Rule is discharged with no order as to costs.

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